



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 18 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7016 0910 0000 4441 6414

Mr. Noel Bibbins, Owner
Hi Hope Farm Realty Associates, LLC d/b/a
Hi Hope Farm, LLC
15960 County Road 84
Adams, NY 13605

Re: **Administrative Docket No. CWA-02-2017-3011**
Hi Hope Farm Realty Associates, LLC. d/b/a
Hi Hope Farm, LLC
SPDES Permit No. NYA000535
Clean Water Act Information Request and Administrative Compliance Order

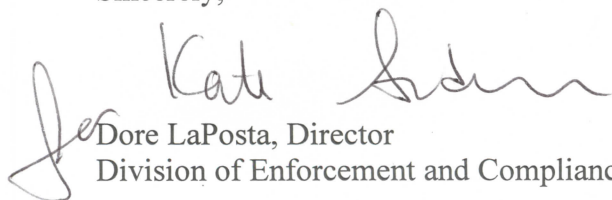
Dear Mr. Bibbins:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that Hi Hope Farm Realty Associates, LLC doing business as Hi Hope Farm, LLC ("Respondent") is in violation of the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) ("CWA" or "Act") for its failure to comply with the terms and conditions of the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). Enclosed is an Information Request and Administrative Compliance Order (together the "Order"), Docket No. CWA-02-2017-3011, issued pursuant to Sections 308 and 309 of the CWA, which details the findings.

Please acknowledge receipt of this Order by signing the acknowledgment page and returning the acknowledgment page by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

Also enclosed is the Inspection Report for the inspection of the Facility conducted by the EPA on July 27, 2016. If you have any questions regarding the enclosed Order, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section, at (212) 637-4268.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC
Tara Blum, Regional Water Engineer, NYSDEC Region 6
Christine Watkins, Jefferson County SWCD (cwatkins@centralny.twcbc.com)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Hi Hope Farm Realty Associates, LLC d/b/a
Hi Hope Farm, LLC
12776 Monitor Mill Rd
Ellisburg, NY 13636

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**INFORMATION REQUEST AND
ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2017-3011

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the “Order”) is issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA”), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued by the NYSDEC to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. The Administrator of EPA has promulgated 40 C.F.R. § 122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. 40 C.F.R. § 122.23 establishes requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and further defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
9. "Owner or operator" is defined by 40 C.F.R. § 122.2 as the owner or operator of any facility or activity subject to regulation under CWA Section 402.
10. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, *inter alia*, a large CAFO or medium CAFO.
12. A "large CAFO" is defined by 40 C.F.R. § 122.23(b)(6) as, *inter alia*, an animal feeding operation that stables or confines 700 or more mature dairy cows, whether milked or dry, and which, as relevant here, discharges pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device.
13. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust

control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

14. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.
16. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. Hi Hope Farm Realty Associates, LLC d/b/a Hi Hope Farm, LLC ("Respondent"), owns and operates Hi Hope Farm located at 12776 Monitor Mill Rd, Ellisburg, NY ("Facility") and Respondent is an owner or operator within the meaning of 40 C.F.R. § 122.2.
2. Respondent is a corporation, and is therefore a "person," as that term is defined in Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. According to the New York Department of State, the service address for Hi Hope Farm Realty Associates, LLC is 10545 Bayshore Drive, Adams, NY 13605 and the service address for Hi Hope Farm, LLC is 15960 County Road 84, Adams, NY 13605, which is also the mailing address for the Facility.
4. The Facility confines and feeds or maintains mature dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. The Facility confines approximately 856 mature dairy cows on-site. Therefore, the Facility is operating as a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(i).
6. The Facility discharges stormwater to Lake Ontario, a navigable water of the United States, via Bear Creek and Sandy Creek, which are also waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

7. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999, and an expiration date of June 30, 2004.
8. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 (“CAFO General Permit” or “Permit”). GP-04-02 has been administratively extended.
9. On July 17, 2000, Respondent applied for coverage and received coverage under the CAFO General Permit with the authorization No. NYA000535. Respondent has been covered as a Large CAFO under the conditions and limitations in the permit at all relevant times addressed by the Order.
10. On July 27, 2016, the EPA conducted an inspection of Respondent’s Facility.
11. Based on the inspection findings, the EPA finds that Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:
 - a. Section IX.F of the CAFO General Permit requires the permittee to retain copies of all records and reports required by this permit for a period of at least 5 years from the date reported. The following records were not maintained or retained as required:
 - i. Section IX.O.i (Production Areas) specifies that all large CAFOs must inspect water lines, including drinking water or cooling water lines, once per day, and document those inspections. At the time of the inspection, records documenting daily water line inspections were not being maintained.
 - ii. Section IX.O.ii of the Permit requires weekly records of the depth marker reading for manure and process wastewater in any open liquid storage structures. At the time of the inspection, depth markers were not observed in any of the manure storage structures on-site; therefore, no depth marker records were available.
 - iii. Section IX.O.iii (Production Areas) specifies that all large CAFOs must keep records documenting any actions taken to correct deficiencies. In addition, any deficiencies not corrected within thirty (30) days must be accompanied by an explanation of the factors preventing immediate correction. At the time of the inspection, the EPA did not observe a mechanism for the Facility to notate actions taken to correct deficiencies.
 - iv. Section IX.O.vi requires the permittee to keep records of overflows from the production areas, including the date and time and an estimate of the volume. At the time of the inspection, it was observed that an overflow had recently occurred due to a pump failure, but there was no documentation of the incident or corrective action available on site.
 - v. Section IX.O.i (Land Application Areas) specifies that all large CAFOs must keep records documenting weather conditions at time of application and for 24 hours prior to and following application. At the time of the inspection, the required weather condition records were not being maintained.
 - vi. Section IX.O.ii (Land Application Areas) specifies that all large CAFOs must keep records documenting date(s) of manure application equipment inspection. At the time of the inspection, there were no records documenting dates of manure application equipment inspection or calibration.

- b. Section IX.N.iii of the CAFO General Permit requires the permittee to install depth markers in all surface and liquid impoundments (e.g. lagoons, ponds, tanks) to indicate the design volume and to clearly indicate the minimum capacity necessary to contain the 25-year, 24-hour rainfall event, including additional freeboard requirements. At the time of the inspection, depth markers were not observed to have been installed in the 1992 Original Manure Storage Facility, the 2007 Manure Storage Facility and the Heifer Manure Storage Facility.
12. Based upon Paragraphs 1-10 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit the following to EPA, with a copy to NYSDEC:

1. A written response detailing how each of the listed Areas of Concern in the enclosed Inspection Report were addressed within **forty-five (45) calendar days** of receipt of this Order.
2. Written monthly progress reports summarizing the measures taken to comply with Ordered Provisions D.2.a – D.2.f until full compliance with the Order and Permit are achieved. Such reports shall include photographs documenting measures implemented and costs associated with each Item. Monthly progress reports are **due December 31, 2016 and January 30, 2017**. If full compliance is not achieved by January 30, 2017, subsequent reports will be due on the last day of each month, until full compliance is achieved.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Immediately upon receipt of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt and return the acknowledgment page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1, below.
2. Respondent shall complete the following items in accordance with the schedule listed below:

Item	Completion Deadline
a. Install depth markers in the following manure storages, in accordance with Section IX.N.iii of the CAFO General Permit: <ol style="list-style-type: none"> 1) 1992 Original Manure Storage 2) 2007 Manure Storage 3) Heifer Manure Storage 	Within thirty (30) days of receipt of this Order.

b. Document and maintain records of daily water line inspections, in accordance with Section IX.O.i (Production Area) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
c. Develop a mechanism to document actions taken to correct deficiencies, in accordance with Section IX.O.iii (Production Area) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
d. Document and maintain records of overflows from the production area, including the date and time and an estimate of the volume, in accordance with Section IX.O.vi of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
e. Document and maintain records of weather conditions at the time of manure application and for twenty four hours prior to and following application, in accordance with Section IX.O.i (Land Application Areas) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
f. Document and maintain records of weekly depth marker readings in the 1992 Original Manure Storage, 2007 Manure Storage and Heifer Manure Storage, in accordance with Section IX.O.ii of the CAFO General Permit.	Begin implementation immediately upon installation of depth markers as required by Ordered Provision D.2.a, but no later than forty (40) days upon receipt of this Order.
g. Submit the report requested in paragraph C.1, above.	Within forty-five (45) calendar days of receipt of this Order.
h. Submit the Monthly Progress Reports requested in paragraph C.2, above.	If full compliance is not achieved by January 30, 2017, subsequent reports will be due on the last day of each month, until full compliance is achieved.

E. GENERAL PROVISIONS

- Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, New York 10007-1866

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water, NYSDEC
625 Broadway
Albany, New York 12233-3506

2. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent shall be signed by an authorized representative of Respondent, and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. Respondent shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer regarding the Requested Information or Ordered Provisions, with the following designated Agency representative:

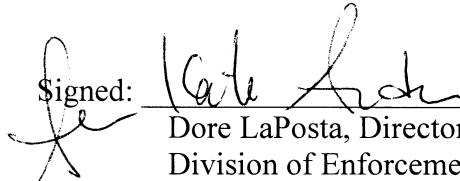
Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, New York 10007-1866
(212) 637-4244

4. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706. Section 706 of the APA provides the grounds for such review.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an action taken by the EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500.00 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R., Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for hearing, the Court determines that you have violated the CWA as described above.
7. Notice is hereby given that failure to comply with the requirements of the CWA Section 308 Information Request may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have failed to comply with the terms

of the Information Request. You may also be subject to administrative remedies for a failure to comply with the Information Request as provided by Section 309 of the CWA.

8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: **OCT 18 2016**

Signed: 
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Hi Hope Farm Realty Associates, LLC d/b/a
Hi Hope Farm, LLC
12776 Monitor Mill Rd
Ellisburg, NY 13636

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a) of
the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**INFORMATION REQUEST AND
ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2017-3011

**ACKNOWLEDGMENT OF RECEIPT OF
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an authorized representative of the Respondent, with
the title of, _____, do hereby acknowledge the receipt of the
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER,
CWA-02-2017-3011.

DATE: _____

SIGNED: _____